

Perumal Vs. State

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Court : Chennai

Decided On : Nov-18-2013

Judge : The Hon'ble Ms.Justice K.B.K.Vasuki

Appellant : Perumal

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 18.11.2013
CORAM: THE HON'BLE Ms.JUSTICE K.B.K.VASUKI CrI.R.C.Nos.831 and 864 of
2007 Perumal .Petitioner in CrI.RC.No.831/2007 S.V.Krishnamurthy .Petitioner in
CrI.RC.No.864/2007 versus The State rep.

by its Deputy Superintendent of Police, CBCID, Chengalpet Range, Chennai and
Criminal Investigation Department, Crime Branch, Villupuram.Respondent in
CrI.RC.No.831/2007 The Inspector of Police, CBCID, Villupuram.Respondent in
CrI.RC.No.864/2007 Criminal Revisions are filed under Sections 397 and 401 of
the Code of Criminal Procedure, against the common judgment dated 9.6.2007
made in CrI.A.Nos.43 and 42/2006 respectively on the file of Additional District and
Sessions Judge, Fast Track Court, Tindivanam confirming the judgment dated
21.8.2006 made in CC.No.52/1998 on the file of District Munsif cum Judicial
Magistrate, Vanur.

For Petitioners : Mr.R.C.Paul Kanagaraj in CrI.RC.831/2007 Mr.N.R.Elango, SC for M/s.P.V.Rajeswari in CrI.RC.864/2007 For Respondents : Mr.C.Iyyapparaj, GA(CrI.Side) COMMON

ORDER

The petitioners in both the criminal revisions are A1 and A2 in CC.No.52/1998 and the appellants in CC.Nos.42 and 43/2006.

The present criminal revisions are filed against their conviction and sentence for the offences under sections 220, 365, 344 and 451 IPC passed by the lower appellate court.

2.The case of the prosecution is that originally A1 and A2, who were then the Sub Inspector of Police and Head Constable of Gingee Police Station, along with A3 to A8 Police personnel attached to different Police Station, were charged for serious offences as if A1 and A2 trespassed into the house of PW1 Chandra and PW2 Balaraman and forcibly took PW2 Balaraman and PW4 Pachayappan.

While doing so, A1 took Aruval from the roof of the house and cut the rope of Mangalya Sutra worn by PW1 and took Mangalyasutra and other gold items and both PW1 and PW2 were taken by Car to Gingee Police Station, where they were illegally detained for one week and thereafter to Sathyamangalam Police Station, where they were detained for two weeks.

In the couRs.of their illegal detention at Sathyamangalam Police Station, other police personnel have brought food daily by rotation to PW2 and PW4 and again, PW2 and PW4 were taken to various places and at last brought to Banruti Police Station, having A8 Kannaian as Sub Inspector of Police, where the case was registered against them and their signature were obtained and thereafter, they were taken to Sub Jail, Panruti and produced before the concerned Judicial Magistrate Court and then remanded to judicial custody.

3.Originally, PW1/wife and PW3/mother approached PW10, Prof.Kalyani at Tindivanam through one Kannan, on 18.2.1994 at about 2.00 pm and PW10 Kalyani obtained statement from PW1/Chandra and PW3/ Thaiyalnayaki/mother,

in the presence of PW11/Lousina and obtained their left thumb impression and sent the same to the District Collector, Villupuram and the copies were sent to District Superintendent of Police, Villupuram, Deputy Superintendent of Police, Gingee and the Hon'ble Chief Minister of Tamil Nadu for necessary action and the copy of the complaint was also sent to Deputy Superintendent of Police, Tindivanam through PW11 Lousina.

As the Deputy Superintendent of Police, Tindivanam was not available, PW11 Lousina handed over the copy of the complaint to PW26 Suyambu, Sub Inspector of Police in the camp office of Deputy Superintendent of Police, Tindivanam and requested him to hand over the same to the Deputy Superintendent of Police, Tindivanam.

4.PW1, having found no further action on the complaint, approached this court by way of CrI.O.P.and the same was originally dismissed on 13.6.1994 and the order of this court was challenged before the Hon'ble Supreme Court, who remanded the mater for fresh disposal of the High Court.

After remand, this court enquired into the matter and disposed of the petition by directing the Principal District Judge, Villupuram to conduct an enquiry regarding this matter and submitted a detailed report to this Court.

Our High Court, in HCP.399/94 on the basis of report and enquiry, awarded Rs.50,000/- as compensation to PW1 and PW2 Balaraman and directed the Inspector General of Police (Crimes).CBCID to register the case and to investigate the matter.

Thereafter, PW30 Harikrishnan, Inspector of Police, CBCID, Villupuram received Ex.P1 memo on 18.1.1996 from the Additional Director of Police (Crime) Madras dated 11.1.1996 directing him to register FIR and to submit the plan of investigation immediately regarding this matter and thereafter, he registered the case in Crime No.1/96 under sections 451, 354, 379, 344 and 220 IPC and prepared Ex.P9 FIR and submitted FIR along with relevant documents to the Judicial Magistrate, Vanur and other officials.

Thereafter, the matter was investigated into by PW31 Meer Sowgath Ali, Deputy Superintendent of Police, CBCID, Chengalpet Range, who went to the scene of occurrence and prepared observation mahazar, drew rough sketch, recorded statement from the witnesses and recovered MO1 to MO3 material objects.

The Investigating Officer also took steps to conduct identification parade and the same was held on 6.11.1997 and also obtained confession statement from the accused.

After investigation, PW31/IO filed charge sheet against the accused for the offences under Sections 220, 451, 380, 365, 344, 345 r/w 34 IPC before the Judicial Magistrate Court, Vanur.

5.The charge sheet was taken on file as CC.No.52/1998.

The accused were charged for the offences under sections 220, 451, 380, 365, 344 and 345 IPC in respect of A1, under Sections 220, 451, 365, 344 and 345 IPC in respect of A2 to A4, under sections 220, 344 and 345 IPC in respect of A5 to A7 and under Section 220 and 342 in respect of A8.

Pending trial, A7/Pakkirisamy died and the remaining accused were re-arrayed as A1 to A7.

6.The prosecution, in order to bring home the guilt of the accused for the offences as referred to above, examined PW1 to PW32 and produced Exs.P1 to P35 documents, besides MO1 to MO6 material objects.

No oral and documentary evidence was adduced on the side of the accused.

The trial court, on the basis of the available evidence, accepted the prosecution case and found A1 to A7 guilty of the respective charges framed against them and convicted and sentenced them.

Aggrieved against the same, A1 to A7 preferred CA.Nos.40 to 45/2006 before the lower appellate court.

The lower appellate court disposed of all the appeals by common judgment dated 9.6.2007, in and under which, the lower appellate court acquitted A3 to A7 from all the charges and acquitted A1 and A2 for the offences under Sections 380 and 345 IPC and found them guilty for the offences under Sections 220, 365, 344 and 451 IPC.

No further revision or appeal is filed against the judgment of acquittal of A3 to A7 from all the charges and A1 and A2 for the offences as referred to above by the prosecution.

Whereas, A1 and A2 have preferred these two criminal revisions against their conviction for the offences as referred to above.

7.The learned senior counsel for the petitioners would rely on the following material factors to question the correctness of the finding of conviction passed against the petitioners for the offences as referred to above: (i)the fiRs.complaint given by PW1 Chandra and PW3 Thaiyalnayaki at the instance of PW10 Prof.Kalyani is suppressed by the prosecution; (ii)the prosecution laid against A1 to A8 is unfair, biased and in violation of Article 19 of the Constitution of India, for the failure of the prosecution to implead the police personnel attached to Sathyamangalam Police station and Panruti Police station as co-accused; (iii)the prosecution failed to atleast examine them as material witnesses and their failure to do so would lead to an adveRs.inference against the prosecution case; (iv)There is strong defence theory for implicating the accused in the present case, inspite of their non-participation in any manner in the alleged occurrence and the defence theory is well spoken by PW1 and some of other prosecution side witnesses PW9 Vijaya.

(v)The identification of the accused by the witnesses cannot be relied upon having regard to the circumstances under which they were assembled before the concerned Judicial Magistrate Court and the circumstances under which identification parade was held and the same does not rule out the possibility of the accused being identified by the witnesses before the concerned Judicial Magistrate Court.

(vi)The manner in which Section 313 Cr.P.C questioning was held and the same vitiated the entire prosecution case; and (vii)The logic and reasoning applied by the lower appellate court to acquit other accused is also applicable to A1 and A2 and A1 and A2 ought to have been acquitted.

8.Per contra, the learned Government Advocate (CrI.Side) would attempt to defend the judgment of conviction and sentence of the lower appellate court by taking this court through the statement of the witnesses in the witness box.

9.Heard the rival submissions made on both sides and perused the records.

10.The allegations raised are that on 16.2.1994 at 9pm A1 and A2 allegedly trespassed into the house of PW1 and PW2 and forcibly took PW2 and illegally detained him in more than one police station upto 14.3.1994.

The witnesses PW1 Chandra and PW9 Vijaya and PW10 Prof.Kalyani, PW11 Lousina and PW31 Meer Sowgath Ali, Deputy Superintendent of Police, CBCID, Chengalpet Range/Investigating Officer have categorically admitted that PW1 Chandra and PW3 Thaiyalnayagi went to the house of PW10 Prof.Kalyani, who obtained their statement and prepared the complaint and read over the same to them and sent the same to the District Collector, Villupuram and copies of the same were sent to the Superintendent of Police, Villupuram, Deputy Superintendent of Police, Gingee and the Hon'ble Chief Minister of Tamil Nadu for necessary action.

PW11 Lousina handed over the copy of the complaint to PW26 Suyambu, Sub Inspector of Police in the camp office of Deputy Superintendent of Police, Tindivanam and requested him to hand over the same to the Deputy Superintendent of Police, Tindivanam and investigation was held by PW31, who enquired the Deputy Superintendent of Police and Superintendent of Police in connection with the same.

However, the document which is the earlier complaint in this regard is yet to see the light of the day.

The complainant mentioned in the affidavit filed before the Enquiry Officer and the Enquiry Officer also dealt with the occurrence is not seriously disputed.

The High Court in HCP No.399/94 while accepting the observation made by the Enquiry Officer based on the evidence recorded by him, was pleased to dispose of HCP, by awarding compensation to PW1 and PW2 and by directing the Inspector General of Police (Crimes).CBCID, Chennai to register the case and conduct investigation, on the basis of the facts emanated from the HCP order and the report of the Enquiry Officer.

But as the existence of the earlier complaint by the victim was already brought to the notice of the Division Bench of this Court through enquiry report and as the High court directed the Inspector General of Police (Crimes).CBCID, Chennai to register the case afresh, the question of drawing any adverse inference against the same does not arise herein.

11.The second objection is unfairness and biased nature of the prosecution against A1 and A2/police officials attached to Gingee Police station and A3 to A7/police officials attached to different police station.

This Court finds serious legal force in the argument so advanced on the side of the petitioners for the following reason.

As already stated above, the charges framed against the accused are that they detained PW2 Balaraman and PW4 Pachiayappan illegally between 16.2.1994 and 14.3.1994 in Gingee Police Station, Sathyamangalam Police Station and Panruti Police station, wherein, false case was foisted against PW2 and PW4 for an act of theft in Cr.No.191/1994 under Section 41 and 102 Cr.P.C culminated as STC.No.628/1994.

Though PW31 Meer Sowgath Ali, Deputy Superintendent of Police, CBCID, chengalpet Range, would in the course of his cross examination admit that Gingee Police station has one Deputy Superintendent of Police, Inspector of Police (Crimes).Inspector of Police (L&O) and writer each attached to Inspector of Police and none could be be illegally detained in the police station without the knowledge

of in-charge of the police station i.e., Deputy Superintendent of Police, Sub Inspector of Police, Inspector of Police (L&O) and writeRs.who were on daily duty, there is no explanation on the prosecution side as to whether they had any role to be played in the so called illegal detention of PW2 and PW4.

Though it is categorically admitted by PW31 that he enquired the Deputy Superintendent of Police and Inspector of Police and also other general public, none of them deposed about illegal detention of PW2 and PW4 and no further investigation was held against them in this regard.

12.Further allegations raised against the accused are that PW2 and PW4 were taken to Sathyamangalam Police Station from Gingee Police Station and detained there for two weeks.

It is nobody's case that Sathyamangalam Police Station had no Deputy Superintendent of Police or Inspector of Police or Sub Inspector of Police.

Here again, no investigation was held as to whether the so called illegal detention was with or without the knowledge of the higher officials attached to Sathyamangalam Police Station.

The police personnel arrayed as A3 and A7 are the lower grade police officials attached to different police station and there is no explanation on the prosecution side as to why higher official are let free without any investigation in this regard.

13.Even otherwise, the Investigating Officer ought to have recorded the statement of the other officials as referred to above who were in Gingee police Station and Sathyamangalam Police Station on day to day duty, had they been present and discharged their duties daily, they would have been aware of the illegal detention of PW2 and PW4 in their respective police stations.

In that event, their failure to hold any enquiry and intimate the same to higher official amounts to dereliction of duty or amounts to an act of abetment in ably aiding the accused in continuing the offence.

Further the Sub Inspector of Police of either of the police stations was neither arrayed as accused nor as witness to ascertain the fact.

Such failure on the part of the prosecution to do so is arbitrary, unfair and biased and would render the entire proceedings to be vitiated.

The learned senior counsel for the petitioners would also draw the attention of this Court to the manner in which charges were framed against the accused.

Though different accused are charged for different offences, the charges are not framed against the accused separately, distinctly and specifically, but are framed as one charge, which is also not in accordance with the procedure laid down under law and cause prejudice to the accused.

14. Further the failure to examine the material witnesses as referred to above would as held by the Division Bench of our High court in the decision reported in 2007-1-LW (Cri) 280 (Sudalaiyandi v.

State rep.

by the Inspector of Police, Kurumbur) and 2008 (3) CLT77 (Elugundan v.

State by Inspector of Police) compel this court to draw an adverse inference against the prosecution, that if the witness would have been examined, it would not have supported the prosecution case.

The Division Bench of our High court in Sudalaiyandi v.

State's case observed that withholding the material witnesses leads to adverse inference under Section 114 (g) of the Evidence Act.

15. It is categorically admitted by PW31 Meer Sowkath Ali that then Deputy Superintendent of Police, Gingee by name Jhanagarathinam was enquired by him and he, in the course of his statement, admitted to have visited Sathyamangalam Police Station on 4.2.1994 and 12.3.1994 and Gingee Police Station from 27.2.1994 and 5.3.1994, which is according to the prosecution, the period of illegal detention by PW2 and PW4.

Had it been true that PW2 and PW4 were detained at the instance of A1 and A2 at Gingee and Sathyamangalam Police Station, the same could have come to the knowledge of the Deputy Superintendent of Police, but Deputy Superintendent of Police was omitted to be examined before the court and such omission remains unexplained by the prosecution.

Further description by PW31 about the location of the police station and the location of different rooms without separate lock up room in the same and the location of Taluk office, Police Station and court under the same roof would not support the prosecution case regarding illegal detention without knowing others about the same.

16.The next aspect to be seen herein is want of sanction order for prosecuting the Police officials.

Order 63 of the Tamil Nadu Standing Order makes it mandatory to obtain sanction to institute the criminal prosecution against the police officer for the offence committed in his official capacity.

Here in this case, the sanction order was not produced along with charge sheet.

The copies of the sanction order produced as Exs.P30 to P33 are marked through PW31/Investigating Officer.

The competent person to speak about the same is the sanctioning authority, who is not examined as one of the witnesses for the reasons best known to the prosecution and such omission is serious enough to go into the root of the case and would raise a serious doubt as to whether any sanction is actually obtained or not and the same renders the entire prosecution to be bad in law and stands vitiated.

17.Next comes the identification of the accused by the witnesses.

It is nobody's case that the accused were already known to the witnesses.

The witnesses are able to identify the accused only by their uniform.

PW1 would identify the accused by the colour of the uniform and white colour dress respectively, but the identification of the accused will in the absence of any other record, in no way connect the accused in the commission of the offence.

Regarding identification of the accused by the witnesses it is totally disbelieved by the lower appellate court.

The lower appellate court in para 61 of its judgment clearly discussed about the manner in which identification parade was held by PW29 Sanjeevi, Judicial Magistrate No.1, Villupuram.

It is observed by the lower appellate court that the same could not be accepted as valid one as formalities were not strictly observed both by the prosecution and by Judicial Magistrate.

It is observed so by the lower appellate court mainly for the reason that both the witnesses and the accused were made to assemble in the Court premises on 6.11.1997 at about 10 am and they remained present there between 10 am and 2.00 pm, the time at which identification parade was held and the accused were in uniform and the witnesses had ample chances to see the accused between 10 am to 2pm.

Further, the accused were made to appear for identification in full uniform and the possibility of the accused being identified by the witnesses much before the identification parade held cannot at all be ruled out.

As a matter of fact, PW29 Judicial Magistrate concerned admitted the presence of witnesses and the accused near court premises between 10am to 2pm and PW2 admitted that he was able to identify the accused in the identification parade because of their identification as Sub Inspector, Inspector and others by PW10 Kalyani.

The lower appellate court has also found fault with the prosecution for the inordinate delay in conducting identification parade i.e., on 6.11.1997 for the alleged occurrence during 1994.

The lower appellate court by relying on the observation of the Hon'ble Supreme Court cited before the same on the accused side, disbelieved the evidence of the witnesses for identification of the accused.

This Court is inclined to agree with the findings of the lower appellate court in disbelieving the evidence of witnesses for identification of the accused, which is one of the material fact ORS. which influenced the lower appellate court to acquit other accused.

If that is so, the same logic and reasoning is also applicable to A1 and A2.

On this score alone, the identification of the accused by the witnesses has to be disbelieved and the same would to reasonable extent affect the prosecution case.

18. Next aspect to be considered herein is the motive for the implication of A1 and A2 in the offence.

It is categorically admitted by PW1 Chandra and PW9 Vijaya that Gingee Police frequently visited their place and because of such visit, their people were unable to move freely from and out of their place and they decided to lodge the police complaint so as to prevent them from making frequent visit to their place.

It is also categorically admitted by them that none of the police official stepped into their village and come to their houses to make any enquiry and the witnesses were summoned to common place and made enquiry.

If such admission is viewed in the light of discussion held above, regarding unfairness and biased nature of the proceedings against A1 and A2, the same would compel this court to accept the defence case that A1 and A2 were falsely implicated in the present case with ulterior motive and for personal gain of the community and such possibility is not ruled out in the present case and the same renders the entire prosecution theory regarding involvement of A1 and A2 in the commission of the offence to be doubtful.

19. Last but not the least argument advanced on the side of the petitioners/accused is the manner in which Section 313 Cr.P.C questioning was

held by the trial court.

The learned senior counsel for the petitioners/accused would draw the attention of this Court through the questioning prepared and read over to the accused in compliance of the procedure laid down under Section 313 Cr.P.C. The same would disclose that the entire evidence of each witnesses against the accused was covered by a single question and the same was put to the accused who was asked to explain the same.

Such practice is deprecated as per the observation of the Hon'ble Supreme Court in the decisions reported in (i)(2004) 7 SCC502(Naval Kishore Singh v.

State of Bihar) (ii)(2006) 13 SCC197(State of M.P.v.

Mukesh and otheRs.and (iii)2008 CrLJ4338(Asraf Ali v.

State of Assam). In all the three cases, the Hon'ble Apex court laid emphasis on the importance of questioning of the accused and the requirement of each material circumstance appearing in the evidence against the accused being put to him specifically, distinctly and separately so as to enable him to duly understand the same and to articulate his defence and to give explanation to the circumstances appearing in evidence against him and failure to do so in the opinion of the Hon'ble Apex Court amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

In the opinion of the Hon'ble Apex Court, such opportunity is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.

20. For better appreciation, this Court is inclined to extract the observations of the Hon'ble Apex Court as follows: Para 5 of the judgment in the case of Naval Kishore Singh v.

State of Bihar, (2004) 7 SCC502 ". The questioning of the accused under Section 313 Cr PC was done in the most unsatisfactory manner.

Under Section 313 Cr PC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him.

At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation.

No such opportunity was given to the accused in the instant case.

We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation.

The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality.

It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him.

Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence".Para 13 of the judgment in the case of Asraf Ali v.

State of Assam, (2008) 16 SCC328 2008 Cri.LJ4338".Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him.

It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused.

If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it.

Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial.

Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice.

This Court also expressed a similar view in S.

Harnam Singh v.

State (Delhi Admn.) while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case.

Recording of a statement of the accused under Section 313 is not a purposeless exercise".²¹. In the present case also, the questioning of the accused under Section 313 Cr.P.C is not in accordance with the guidelines as referred to above and the same is in intercept manner.

The manner in which the questions put to the accused renders the opportunity provided to the accused under Section 313 Cr.P.C to be an empty formality and the same greatly prejudiced the accused and vitiated the trial.

It is also argued on the side of the petitioners that had the trial court applied the same reasoning for acquittal of other accused from the charges levelled against them to the petitioners/A1 and A2, the same would not have resulted in the erroneous judgment of conviction passed against A1 and A2 for the offences as referred to above.

This court is of the view that such argument deserves merit and acceptance.

22. Thus, for the discussion held above, this Court is inclined to hold that there are serious infirmities in the procedure followed by the prosecution and the same are omitted to be considered by both the courts below, that too in the light of the admission of the eyewitnesses of the prosecution side witnesses, as such, both the courts below have committed serious illegality and irregularity in overlooking the material factors as discussed above and misdirected themselves and the same led to miscarriage of justice warranting serious interference by this court.

23. In the result, both the criminal revisions are allowed by setting aside the order of conviction passed by both the courts below and the petitioners/A1 & A2 are acquitted from the charges levelled against them.

The bail bond, if any executed by the petitioners shall stand cancelled and the fine amount if any paid by the petitioners shall be refunded to them.

rk Index:Yes/No 18.11.2013 Internet:Yes/No To 1. The Additional District and Sessions Judge, Fast Track Court, Tindivanam.

2. The District Munsif cum Judicial Magistrate, Vanur.

3. The Deputy Superintendent of Police, CBCID, Chengalpet Range, Chennai and Criminal Investigation Department, Crime Branch, Villupuram.

4. The Inspector of Police, CBCID, Villupuram.

5. The Public Prosecutor, High court, Madras.

K.B.K.VASUKI, J.

rk CrI.R.C.Nos.831 and 864 of 2007 18.11.2013

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